No. 87-645

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

F. CLARK HUFFMAN, *et al.*,
Petitioners

v.

WESTERN NUCLEAR, INC., *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF ELDORADO NUCLEAR LIMITED, AMOK LTD., SASKATCHEWAN MINING DEVELOPMENT CORPORATION, URANERZ EXPLORATION AND MINING LTD., AND THE GOVERNMENTS OF THE PROVINCE OF SASKATCHEWAN AND THE PROVINCE OF ONTARIO AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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February 25, 1988

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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Eldorado Nuclear Limited, Amok Ltd., Saskatchewan Mining Development Corporation, Uranerz Exploration and Mining Ltd. (the "Canadian producers") and the Governments of the Province of Saskatchewan and the Province of Ontario[1] respectfully submit this brief as *amici curiae* in support of the Solicitor General's petition seeking reversal of the judgment of the United States Court of Appeals for the Tenth Circuit, which upheld the decision of the District Court for the District of Colorado enjoining the Secretary of Energy from enriching foreign uranium. Both the petitioner and the respondents have consented to the filing of this brief, and the written consents have been filed with the Clerk of the Court.

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[1] The Canadian producers and the Governments hereinafter are referred to collectively as "the Canadian Interests."

STATEMENT OF INTEREST OF THE AMICI CURIAE

Canada is the largest producer and exporter of uranium in the Western world. It enjoys a comparative cost advantage in uranium with production from some of the world's richest uranium deposits at relatively low costs. The Canadian uranium industry produced approximately 32.4 million pounds of uranium in 1987, valued at approximately U.S. 800 million dollars. The Canadian producers appearing as *amici curiae* account for over sixty percent of total Canadian uranium production. The Provinces of Saskatchewan and Ontario obtain considerable revenues from the taxes and royalties charged to producers for the extraction and processing of uranium.

The United States is the world's largest commercial market for uranium. Canada is a reliable supplier of uranium to the United States, and the largest foreign supplier. More than one-third of Canadian uranium production is exported to the United States. The Canadian uranium industry has made substantial investments based in part on a reasonable expectation of continued access to the United States market.

The district court's injunction would restrict the flow of unenriched Canadian uranium into the United States and the flow of uranium in the international marketplace generally. If not overturned, the lower court's decision could also cause broader damage to the trade relationship between the United States and Canada, its largest trading partner. Recognizing the direct repercussions the lower court's decision would have upon the Canadian industry and United States-Canadian trade relations, the Government of Canada submitted a Diplomatic Note to the United States Department of State urging the United States to appeal the lower court's decision. (Diplomatic Note No. 194 from the Embassy of Canada, July 22, 1987, attached hereto as Appendix A.)

STATEMENT OF THE CASE

Section 161(v) of the Atomic Energy Act of 1954, as amended, directs the Secretary of Energy ("the Secretary") to restrict enrichment of foreign uranium "to the extent necessary to assure the maintenance of a viable domestic uranium industry." 42 U.S.C. §2201(v) (1982 & Supp. IV 1986). Pursuant to this authority, the Atomic Energy Commission (which then administered the statute) imposed restrictions on enrichment of foreign uranium in 1967; those restrictions were gradually phased out beginning in 1977, and were completely eliminated in 1984. Pursuant to Section 170B of the Atomic Energy Act (42 U.S.C. §2210b), as amended, the Secretary submitted annual reports to the President and to the Congress stating that the domestic industry had not been viable in 1984 and 1985. He also concluded, however, that the domestic industry's difficulties were due to a variety of "structural weaknesses" unrelated to imports, and that the reimposition of restrictions on the enrichment of foreign uranium would do nothing to address these fundamental problems and would in no way "assure the maintenance of a viable domestic uranium industry." *See* Uranium Enrichment Services Criteria, 51 Fed. Reg. 27,132, 27,134, 27,138 (1986). Indeed, the Secretary determined that imposing restrictions was likely to be "counterproductive" because domestic utilities would be more likely to purchase enrichment services overseas, and these utilities would "almost certainly . . . purchase foreign uranium" as well. *Id.* at 27,136. The Secretary determined that restrictions on enrichment of foreign uranium should not be imposed in these circumstances.

The district court below ruled that Section 161(v) automatically requires the Secretary to restrict enrichment of foreign uranium whenever the domestic industry is not viable, even when to do so would not "assure the maintenance of a viable domestic uranium industry." On appeal, the Court of Appeals for the Tenth Circuit upheld the district court's decision. 825 F.2d 1430 (10th Cir. 1987).

SUMMARY OF ARGUMENT

This is a simple case, with great practical importance. The language of Section 161(v) makes clear that the Secretary is not required to restrict enrichment of foreign uranium automatically if he determines that the domestic industry is not viable. Rather, the Secretary is instructed to do so only "to the extent necessary to assure" the viability of the domestic industry. The Secretary has specifically determined that restrictions on enrichment would be useless, indeed "counter-productive," and that they need not and should not be imposed under Section 161(v) at this time.

The Secretary's interpretation is supported by the legislative history of the statute and by precedent of this Court in a closely analogous case. The lower court's decision effectively rewrites Section 161(v), ignores both the specific factual findings of the agency entrusted to administer the statute and controlling precedent, and threatens vital trading relationships between the United States and Canada.

ARGUMENT

A. SECTION 161(V) ON ITS FACE DOES NOT REQUIRE THE SECRETARY TO RESTRICT AUTOMATICALLY ENRICHMENT OF FOREIGN URANIUM

Section 161(v) must first be interpreted by examining the plain language of the statute itself. *See Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 197 (1976).

Section 161(v) requires that the Secretary *"to the extent necessary to assure the maintenance of a viable domestic uranium industry,* shall not offer [uranium enrichment] services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States." 42 U.S.C. § 2201(v) (1982 & Supp. IV 1986) (emphasis added).

The statute does not require the Secretary to blindly impose unwarranted or futile restrictions that will not

assure the viability of the domestic uranium industry. Instead, Section 161(v) directs the Secretary to restrict enrichment only "to the extent necessary to assure" the viability of the domestic industry.

The lower court's interpretation of the statute would strip the Secretary of the authority to determine whether restrictions would serve any purpose, and instead would require "that when domestic nonviability is determined, restrictions on enrichment of foreign source uranium *must* be imposed. . . ." 825 F.2d at 1438-39 (emphasis added). The lower court's interpretation rewrites the statute. Section 161(v) does not impose an automatic requirement that the Secretary restrict enrichment of foreign uranium whenever the domestic industry is not viable. Congress could have imposed such a mandatory trigger. For example, Congress could have directed that "the Secretary shall not offer enrichment services for foreign source uranium whenever he determines that the domestic uranium industry is nonviable."

Indeed, Congress *did* impose such automatic directives in other provisions of the Act.[2] These other provisions contrast markedly with Section 161(v), which requires the Secretary to restrict enrichment of foreign uranium only "to the extent necessary to assure" the viability of the domestic industry.[3] The plain language of Section 161(v)

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[2] For example, Section 170B(d) of the Act, as amended, directs the United States Trade Representative to request an "escape clause" investigation if the Secretary determines that the domestic uranium industry is seriously injured or threatened by excessive imports. *See* 42 U.S.C. § 2210b(d). And Section 170B(e)(1) requires the Secretary to request the Secretary of Commerce to initiate a "national security" investigation if he determines that imports of uranium account for greater than 37.5 percent of domestic requirements for two consecutive years. *See* 42 U.S.C. § 2210b(e)(1).

[3] The legislative history supports this interpretation. Congress "did not consider it appropriate to place an embargo or other statutory restriction on the importation of foreign uranium," but determined that it "would be reasonable to place restrictions upon the performance of [enrichment] services . . . *where the enrichment of foreign*

(footnote continued on next page)

makes clear that Congress declined to impose an automatic trigger but instead left it to the Secretary's expertise to determine whether restrictions are "necessary" to assure the viability of the domestic industry.[4]

B. THE LOWER COURT'S DECISION CANNOT BE RECONCILED WITH THIS COURT'S DECISION IN A CLOSELY ANALOGOUS CASE

Even if Section 161(v) could be considered ambiguous, the lower court's decision conflicts directly with this Court's recent holding in *Young* v. *Community Nutrition Inst.*, 476 U.S. 974 (1986). In *Young*, the relevant statute directed that the Food and Drug Administration (the "FDA") "*shall promulgate regulations* limiting the quantity therein or thereon [of carcinogens] *to such extent as he finds necessary* for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe. . . ." 21 U.S.C. § 346 (1982 & Supp. IV 1986) (emphasis added). The FDA had determined that it was not required to promulgate regulations if those regulations were not necessary to protect the public health. Respondents argued—as does the domestic industry in the present case—that the phrase "to such extent as [it]

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material would have an adverse effect on the domestic uranium industry." S. Rep. No. 1325, 88th Cong., 2d Sess. (1964), *reprinted in* 1964 U.S. Code Cong. & Ad. News 3105, 3121 (emphasis added). Here the Secretary has determined that enrichment of foreign uranium does *not* have an adverse effect on the domestic uranium industry and that restrictions therefore would do nothing to assist the domestic industry. 51 Fed. Reg. at 27,138. Restrictions therefore need not be imposed.

[4] The lower court's reading also could lead to absurd results. Under the lower court's view of Section 161(v), the Secretary would be required to restrict enrichment of foreign uranium even if all domestic uranium reserves were exhausted. The United States would then be prohibited from providing any enrichment services. The Court cannot assume that Congress could have intended such an absurd result. *See, e.g., United States* v. *Turkette*, 452 U.S. 576, 580 (1981) ("[A]bsurd results are to be avoided" when interpreting statutes).

finds necessary" qualified only the amount of the restrictions to be imposed, not whether restrictions should be imposed at all. This Court ruled that because the FDA's interpretation was "sufficiently rational" a reviewing court was precluded from substituting its own judgment for that of the agency. 476 U.S. at 981.

That same analysis controls this case. The Secretary has interpreted his obligations under Section 161(v) in a manner consistent with the plain language of the statute and his determination that if restrictions will not benefit the domestic uranium industry they can hardly be "necessary."[5] The Secretary's rational interpretation must be upheld in these circumstances. *Young, supra; Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) ("the question for the court is whether the agency's answer is based on a permissible construction of the statute").

The lower court's attempts to distinguish *Young* are unavailing.

First, the word "shall" appears in both statutes, undercutting the lower court's analysis that that term imposes a mandatory trigger in this case. 825 F.2d at 1438.

Second, the lower court summarily concluded that the qualifying phrase in Section 161(v), "to the extent necessary to assure the maintenance of a viable domestic industry," only informs the Secretary of the amount of the restrictions to be imposed. *Id.* at 1438. In Section 161(v),

[5] Respondents argue that the Secretary's interpretation of Section 161(v) addressed only whether restrictions by themselves "would be sufficient" to assure the viability of the domestic industry, rather than whether such restrictions were "necessary." (Brief for Respondents in Opposition at 13.) This is incorrect. The Secretary did not conclude that restrictions should not be imposed merely because by themselves they would be "insufficient." Rather, after recognizing that under Section 161(v) he "must answer the question whether restrictions are 'necessary' . . . ," 51 Fed. Reg. at 27,134, he concluded that restrictions would "do nothing" to assist the domestic industry and would in fact be "counterproductive." *Id.*

however, the qualifying phrase "to the extent necessary" immediately precedes the word "shall," whereas in *Young* the two phrases were not connected. 476 U.S. at 981. Therefore, if anything, the Secretary's interpretation of Section 161(v) is even more reasonable and permissible than that of the FDA in *Young*.[6]

Third, Section 161(v) on its face undercuts the lower court's reasoning that here the "unambiguous language of the statute" precludes deference to the Secretary's interpretation under *Young*. 825 F.2d at 1438. As noted above, the statute plainly does not require the Secretary to impose automatically restrictions when the domestic industry is not viable.[7] In fact, it clearly supports the Secretary's interpretation. At most, the statute is ambiguous, the Secretary's interpretation is "sufficiently rational," and *Young* controls.

Finally, the lower court reasoned that, unlike the situation in *Young*, here the Secretary "proposed to abandon the statutory goal." *Id.* at 1439. In fact, the Secretary has never abandoned the statutory goal, nor even challenged it. Rather, the Secretary has determined that restrictions at this time would be pointless and would do nothing to assure the viability of the domestic industry.

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[6] In addition, Section 161(v) contains no language indicating the level of restrictions to be imposed. In *Young*, by contrast, the statute might reasonably have been read to qualify only the level of controls to be imposed because it required the FDA to "promulgate regulations *limiting the quantity* therein . . . to such extent as he finds necessary . . . and any *quantity exceeding the limits so fixed* shall also be deemed to be unsafe. . . ." 21 U.S.C. § 346 (emphasis added). Thus, there is even less reason here than in *Young* to presume that the phrase "to the extent necessary" in Section 161(v) only modifies the *amount* of restrictions to be imposed.

[7] The lower court also improperly substituted its opinion with respect to the underlying facts for that of the Secretary. The lower court reasoned that restrictions must be imposed "until the domestic industry is rejuvenated and becomes viable." 825 F.2d at 1439. This ignores the Secretary's specific factual findings that restricting enrichment of foreign uranium will not assist the domestic industry. 51 Fed. Reg. at 27,138.

C. IF UPHELD, THE LOWER COURT'S DECISION WILL ADVERSELY AFFECT CRITICAL UNITED STATES-CANADIAN TRADE RELATIONS

In addition to the plain language of Section 161(v) and the reasoning in *Young*, the adverse consequences of an erroneous interpretation of Section 161(v) are also relevant when interpreting the statute. If upheld, the lower court's decision will adversely affect the Canadian uranium industry and United States-Canadian trade relations generally.

The district court's injunction unilaterally reverses United States trade policy toward Canada. The United States Trade Representative has concluded that restrictions on enrichment of foreign uranium would have "an adverse impact on our trade and other relationships with important trading partners without resolving the long-term problems of the industry."[8] Similarly, the Office of the United States Trade Representative submitted a declaration to the district court stating that entry of the injunction "will have major adverse effects on the trade policy of the United States," and that the injunction "would be particularly damaging to trade relations with Canada."[9]

The Canadian Government has also concluded that the lower court's decision threatens important trading relationships. In a Diplomatic Note submitted to the Department of State, the Government of Canada stated that the lower court's decision "will severely disrupt Canadian exports of uranium to the United States, will have harmful implications for the international uranium market, and will give rise to major trade irritants between the

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[8] Letter from United States Trade Representative Clayton Yeutter to Secretary of Energy John Herrington, Dec. 26, 1986, *quoted at* 51 Fed. Reg. 27,137.

[9] Declaration of Robert A. Reinstein, Director of Energy Trade Policy, Office of the United States Trade Representative, June 13, 1986, attached as Appendix B at 2b.

United States and its current suppliers of uranium." The Government of Canada also informed the Department of State that restrictions on the enrichment of foreign uranium under Section 161(v) would be "clearly inconsistent" with the United States' obligations under the General Agreement on Tariffs and Trade.[10] The Office of the United States Trade Representative agreed, stating that a ban on enrichment of foreign uranium "would be subject to legal challenge under the General Agreement on Tariffs and Trade."[11]

In addition, the Government of Canada has stated that the imposition of new restrictions on the enrichment of foreign uranium "would be completely at odds with current efforts to negotiate a free-trade agreement between our two countries."[12] The United States and Canada recently signed a comprehensive Free-Trade Agreement which provides, *inter alia,* that "the United States of America shall exempt Canada from any restrictions on the enrichment of foreign uranium under Section 161(v) of the Atomic Energy Act." (Canada-United States Free-Trade Agreement, December 9, 1987, Annex 902.5(1).)[13]

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[10] Diplomatic Note from the Embassy of Canada, July 22, 1987, Appendix A at 1a (hereinafter "Diplomatic Note").

[11] Declaration of Robert A. Reinstein, *supra* note 9. Article III of the General Agreement on Tariffs and Trade prohibits member nations from regulating the internal sale or use of foreign goods in a manner less favorable than that accorded to like products of domestic origin. General Agreement on Tariffs and Trade, October 30, 1947, art. III, 61 Stat. (pt. 5) A3, T.I.A.S. No. 1700, 55 U.N.T.S. 194, as amended. The lower court's injunction would contravene Article III by prohibiting the Secretary from enriching foreign uranium while permitting him to continue to enrich domestically-produced uranium.

[12] Diplomatic Note, Appendix A at 1a.

[13] *See* Appendix C. While the Agreement was signed by President Reagan and Prime Minister Mulroney on January 2, 1988, it still must be approved by the United States Congress and by the Canadian Parliament. Moreover, if it is approved, the Agreement will not take effect until January 1, 1989, so that affirmance of the lower court's decision would disrupt Canadian uranium trade and production at least until that date. Finally, even if and when the Agreement is

(footnote continued on next page)

The conflict between the lower court's interpretation of Section 161(v) and the letter and spirit of the Free-Trade Agreement should be taken into account when interpreting that statute.

Section 161(v) should be interpreted in a manner consistent with the United States' international obligations. The lower court's rewriting of Section 161(v) in contravention of the language of the statute and this Court's precedent amounts to an unwarranted judicial reversal of the Executive Branch's trade policy toward its largest trading partner.

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implemented, the lower court's decision will threaten the United States' trading relationships with other important trade partners, most notably Australia.

CONCLUSION

For the foregoing reasons, the Canadian Interests respectfully urge that the Court reverse the decision of the court below.

Respectfully submitted,

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February 25, 1988

APPENDIX A

Canadian Embassy Ambassade du Canada

Note no. 194

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to a decision of July 20, 1987, in the United States Court of Appeals for the Tenth Circuit to provide relief to the United States' domestic uranium industry based on Section 161(v) of the Atomic Energy Act of 1954. The court has concluded that the previous decision of the United States District Court for the District of Colorado was correct with respect to the statutory obligation under Section 161(v), and has affirmed that injunctive relief was appropriate by enjoining the Department of Energy to limit the enrichment of uranium of foreign origin destined for use within the United States. The result of this decision is that there is now in effect a complete ban on the enrichment of foreign uranium in the United States.

It is the view of the Government of Canada that the decision, should it remain in force, will severely disrupt Canadian exports of uranium to the United States, will have harmful implications for the international uranium market, and will give rise to major trade irritants between the United States and its current suppliers of uranium. In addition, restricting the United States market to only domestic uranium would be completely at odds with current efforts to negotiate a free-trade agreement between our two countries, contrary to declarations against protectionism made at Punta del Este, and clearly inconsistent with the United States' GATT obligations.

Canada will be the foreign supplier most adversely affected by this restriction. Canada is a reliable, fair and competitive supplier of uranium to many countries and is, by far, the largest foreign supplier to the United States. One-third of Canadian uranium production is exported to meet the requirements of United States power utilities.

These sales, which exceeded $200,000,000 in 1985, represent nearly 70 percent of total U.S. uranium imports.

It must be recognized that, to the extent United States utilities choose not to purchase enrichment services abroad, the affirmation of the lower court's decision represents a total embargo on imports of uranium from Canada. The Canadian government is very concerned to see the world's largest market for uranium once again protected by unilateral non-tarrif [sic] barriers as it was during the period from 1967 to 1984.

The Government of Canada urges the Government of the United States to appeal this court decision so that unrestricted access for foreign uranium will be restored. If it is found that this decision cannot be appealed, the Government of Canada would urge that all legislative and administrative avenues be actively explored to effect the elimination, or at least the significant reduction, of this unilateral import restriction.

The Embassy of Canada takes this opportunity to renew to the Department of State the assurances of its highest consideration.

[Signed and Sealed
with Embassy seal]

July 22, 1987
Washington, D.C.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

WESTERN NUCLEAR, INC., *et al.*,
Plaintiffs,

v.

F. CLARK HUFFMAN, *et al.*,
Defendants.

Civil Action No. 84-2315

DECLARATION OF ROBERT A. REINSTEIN

I, Robert A. Reinstein, declare and say:

1. Since February 1982 I have been the Director of Energy Trade Policy, Office of the United States Trade Representative, Executive Office of the President. From 1975 to 1982 I was employed by the Federal Energy Administration (FEA) and the U.S. Department of Energy (DOE), which the FEA became part of in October 1977. From 1978 to 1981 I was Director of Economic and Data Analysis for DOE's Economic Regulatory Administration, serving in effect as the chief analyst for DOE's regulatory programs. In my current position I am responsible for coordination of Administration trade policy for energy and related sectors. In this capacity, I chair a number of interagency subcommittees and working groups, including the Energy Trade Policy Subcommittee of the Trade Policy Staff Committee and the interagency Uranium Working Group. I make the following statements based upon my personal knowledge and belief and upon other information conveyed to me by my advisors in the course of my official duties.

2. I am familiar with the above-referenced litigation. I have reviewed plaintiffs' proposed order, which would enjoin the DOE from enriching source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States until the viability of the domestic uranium industry is assured. I have also reviewed the declaration of James B. Devine, Department of State, setting forth the negative foreign policy implications of plaintiffs' proposed order.

3. I understand that in determining whether to issue an injunction it is appropriate to consider the public interest, including the foreign policy and the trade policy interests of the United States. I submit this declaration to advise the Court that entry of an injuction [sic] such as plantiffs [sic] propose will have major adverse effects on the trade policy of the United States.

4. The Office of the United States Trade Representative has collaborated with numerous other government agencies in conducting an in-depth investigation of conditions in the domestic uranium mining and milling industry. This investigation indicated that a ban on enrichment of foreign uranium is highly unlikely to render the domestic industry "viable" in any meaningful sense. On the contrary, any such restriction would discriminate against foreign suppliers of unenriched uranium and would impair the United States [sic] trading relations with some of our most important trading partners.

5. An injunction against enrichment of foreign uranium would be particularly damaging to trade relations with Canada. Canada is our largest trading partner and is also a major supplier of unenriched uranium. A ban on U.S. enrichment of Canadian feedstock would force U.S. utilities with contracts for Canadian supplies to seek enrichment services in Europe at substantially higher transportation costs. This would impair Canadian access to and competitiveness in the U.S. market and very likely

depress the price of Canadian uranium in world markets. The Canadian leadership and media will interpret such a move as a significant new trade barrier, and will vociferously object. Indeed, they have already informally expressed strong concerns on this issue.

6. Plaintiffs' proposed injunction would be especially harmful at the present time. The United States and Canada have just begun negotiations towards a bilateral trade arrangement whereby both sides are seeking to remove substantially all barriers to bilateral trade in goods and services. To erect a new trade barrier at the very outset of these negotiations—without economic justification—could be construed in Canada as evidence that the U.S. government lacks genuine interest in free trade and/or lacks the ability to provide promised benefits under a free trade agreement. Such a perception would erode the base of public support for this high-visibility initiative of the current government in Canada, and complicate the task of negotiators on both sides.

7. New enrichment restrictions on foreign uranium would also seriously interfere with on-going, parallel negotiations to secure removal of certain Canadian trade barriers affecting the uranium processing industry. It is difficult to argue that Canada should remove barriers to free trade in uranium products at the same time that we are adding barriers of our own.

8. A ban on enrichment of foreign uranium would harm the commercial interests of other major trading partners such as Australia. Such a ban would be subject to legal challenge under the General Agreement on Tariffs and Trade (GATT). GATT Article III broadly prohibits member nations from adopting rules or regulations which affect the internal sale, distribution or use of goods, and which discriminate against foreign suppliers of such goods. Even if the stated ban were considered defensible under the national security exception of GATT Article XXI, the United States might be found to owe compensation to our trading partners for the "nullification or

impairment" of their benefits under the GATT. In this case, other sectors of the U.S. economy would be asked to make sacrifices for any short-term relief provided for the uranium industry.

9. For all the foregoing reasons, I have concluded that implementation of an injunction against U.S. enrichment of foreign uranium would have major adverse effects on pending trade negotiations and on the trade policies of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 1986.

[Signed]
Robert A. Reinstein

APPENDIX C

EXCERPTS FROM CANADA-UNITED STATES FREE-TRADE AGREEMENT

FINAL TEXT DECEMBER 9, 1987

OBJECTIVES

The objectives of this Agreement, as elaborated more specifically in its provisions are to:

(a) eliminate barriers to trade in goods and services between the territories of the Parties;

(b) facilitate conditions of fair competition within the free-trade area;

(c) liberalize significantly conditions for investment within this free-trade area;

(d) establish effective procedures for the joint administration of this Agreement and the resolution of disputes; and

(e) lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement. . . .

NATIONAL TREATMENT

Each Party shall, to the extent provided in this Agreement, accord national treatment with respect to investment and to trade in goods and services. . . .

ANNEX 902.5

Import Measures

1. The United States of America shall exempt Canada from any restriction on the enrichment of foreign uranium under section 161v of the *Atomic Energy Act*. . . .

STANDSTILL

The Parties recognize that this Agreement is subject to domestic approval procedures. Accordingly, both Parties understand the need to exercise their discretion in the period prior to entry into force so as not to jeopardize the approval process or undermine the spirit and mutual benefits of the Free Trade Agreement."